

# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 07/20/04

AGENDA ITEM 8

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Appeal of the Planning Commission's Approval of PL-2002-0098 Use Permit – Robert Lavassani (Applicant/Owner) – Request to Construct a Restaurant with a Bar and Night Club on Property Located at 1705 West Winton Avenue in an Industrial (I) District

### **RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution denying the appeal and supporting the Planning Commission's approval of the use permit subject to the attached conditions of approval.

### **DISCUSSION:**

On June 3, 2004, the Planning Commission unanimously approved the applicant's request to construct a restaurant with a bar and nightclub. The Commission noted that there are very few eating establishments in the industrial area and that this sit-down restaurant could serve a broader area as well.

The application is for a two-story building of an attractive contemporary Mediterranean design. The first floor would include the restaurant, bar and nightclub. The second floor would be used only for offices and storage. Staff had recommended minor changes to the architectural details. However, the Planning Commission approved the design as submitted by the applicant, and the corresponding conditions have been deleted accordingly. Full meals would be available from 10:00 a.m. through 10:00 p.m. each day of the week with a light menu available during all business hours. The Planning Commission also approved alcohol sales from the hours of 10:00 a.m. through midnight every night. Minors would not be allowed in any portion of the business after 10:00 p.m. The applicant intends on providing both recorded and live music. Conditions of approval limit the hours the music can be played to between 10:00 a.m. and 10:00 p.m. Sunday through Thursday and from 10:00 a.m. to midnight on Friday and Saturday.

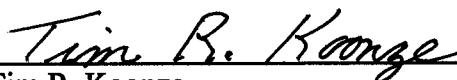
The City received two appeals of the Planning Commission's decision, one from the owner of a nearby industrial parcel and the other from Community Prevention of Alcohol Related Problems (CommPre). The letter from the property owner states that the business would attract drug activity, prostitution and disorderly behavior compromising the security in the area and requiring a need for extra police protection. A condition of approval requires that the applicant provide one security guard for every 100 patrons. The Acting Chief of Police is satisfied that this will provide adequate security.

During the Planning Commission meeting, a representative of CommPre spoke against the project stating that he supported the restaurant but not the nightclub. In its appeal letter, CommPre suggests that the type of Alcoholic Beverage Control (ABC) license required by the conditions of approval is in conflict with the type of use proposed. The appellant stated that the Type 47 license required by the City does not allow a nightclub and that a Type 48 license would be appropriate as it is specific to nightclubs. However, the Type 48 license would restrict minors from entering the premises at any time. Staff conferred with ABC officials and confirmed that the Type 47 license is appropriate for the proposed use. ABC explained that the Type 47 license for restaurants can include a nightclub as long as food is served during the times alcohol is served. For example, Applebee's operates under a Type 47 license and has a use permit for a separate bar.

CommPre indicated that the staff report neglected to state that there are nearby single- and multi-family dwellings that would be impacted by the nightclub operation. The presence of these nonconforming dwellings was indicated in a report to the Planning Commission on January 8, 2004. There is a single-family dwelling and a duplex on the south side of West Winton Avenue and a single-family dwelling at Corsair Boulevard. These residences are located approximately 100 feet from the restaurant site. Notices of the Commission hearings were mailed to the owners and residents of these properties. One resident spoke in favor of the project at the January 8 hearing; another submitted a letter against the project for the June 3 hearing stating concerns regarding traffic, racing cars, noise, and unkempt properties. These residences are legal non-conforming uses within an Industrial District and are subject to the noise and traffic associated with industrial activities from the industrial uses that surround them. The busiest restaurant and nightclub activities would occur after most of the industrial businesses have closed and, therefore, its patrons would not significantly impact the traffic situation. The closest residential zoning district is over one-half mile away (the Hayward Mobile Country Club). A condition of approval prohibits noise from exceeding the ambient levels beyond the site. An additional condition requires that noise from the entertainment shall not be audible outside the premises.

CommPre also stated that they are concerned about a potential increase in noise, speeding automobiles, drunk driving, fights and disturbing the peace. A condition of approval requires the nightclub operator to manage the noise generated by the nightclub such that it would not affect properties beyond the site. Staff proposes the addition of a standard condition requiring the nightclub operator to take whatever steps necessary to assure the orderly conduct of employees, patrons and visitors on the premises which may include the hiring of additional security guards. Failure to comply with the conditions could result in revocation of the use permit.


Prepared by:

  
Tim R. Koonze  
Assistant Planner

Recommended by:

  
Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:

  
\_\_\_\_\_  
Jesús Armas, City Manager

Attachments: Exhibit A. Modified Conditions of Approval  
Exhibit B. Planning Commission Minutes and Staff Report, dated June 3, 2004  
Exhibit C. Two Appeal Letters, dated June 10 and June 11, 2004  
Draft Resolution

7/15/04

**CONDITIONS OF APPROVAL**

Use Permit No. PL-2002-0098  
Robert Lavassani (Applicant/Owner)

*As Approved by the Planning Commission June 3, 2004*

**General:**

1. Application No. PL-2002-0098 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business license has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. If a building permit is issued for construction of improvements authorized by the Use Permit approval, the Use Permit approval shall be void two-years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Use Permit approval.
3. All improvements indicated on Exhibit "A", are hereby approved and must be installed prior to authorization for final building occupancy. In addition, all improvements shown on Exhibit "A" of PL-2002-0098 UP shall be completed prior to occupancy.
4. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
5. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
6. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
7. The establishment shall operate only as a License Type 47 per the State Department of Alcoholic Beverage Control regulations.
8. All signs shall comply with the Sign Ordinance regulations for the Industrial District. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director.
9. ~~The roof shall be a color that is consistent with the earth tones of the restaurant. The color shall meet the approval of the Planning Director.~~

- ~~10. The columns used for the entry feature and trellis shall be decorative columns utilizing heavy timber accented with a decorative base. The design shall meet the approval of the Planning Director.~~
- ~~11. The windows shall incorporate a trim element that compliments the restaurant design. The window treatment shall meet the approval of the Planning Director.~~
12. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
13. Exterior lighting shall be provided for the exterior of the premises, including adjacent public sidewalks and the parking areas under control of licensee(s). The level of lighting shall comply with the City of Hayward Security Ordinance. The lighting shall operate during all hours of darkness during which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel. However, the positioning of such lighting shall not disturb the normal privacy and use of the adjoining properties. The design and location of lighting fixtures shall meet the approval of the Planning Director.
14. No pay phones shall be permitted on the exterior of the building or premises.
15. The establishment shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall that reflects the design of the restaurant and screens the trash enclosure from the view of abutting properties or the public right-of-way. The design shall meet the approval of the Planning Director.

**Solid Waste & Recycling:**

16. This approval is subject to the requirements contained in the memo from the Solid Waste and Recycling Division of the Public Works Department dated 6/13/03.

**Public Works:**

17. Prior to connection to the City of Hayward sanitary sewer main the applicant must purchase additional sewer system capacity to accommodate the volume and waste strength of waste water to be discharged from the restaurant.

**Engineering:**

18. Prior to issuance of a building permit:
  - a. A lot line adjustment shall be approved or a parking easement acquired to accommodate the parking that is shown on the adjacent property to the north. The document(s) shall be approved by the City Engineer.
- \* ~~\_\_\_\_\_~~ *Strike-through conditions indicate conditions removed by the Planning Commission as part of the Use Permit Approval June 3, 2004*
  - b. The owner shall dedicate a 14-foot-wide strip of land across the Cloud Way frontage for the purpose of street right-of-way.

- c. A grading and drainage plan shall be submitted that meets the approval of the City Engineer. The plans shall include the storm drain system layout and shall show all pipe lengths, sizes and inverts, grates and outfall areas. The storm drain shall have a Best Management Practice structures (CDS and/or CRS or equal) prior to connecting to the public storm drain system.
  - d. Hydraulic calculations shall be submitted that meet the approval of the City Engineer.
19. Prior to connection of utilities:
- a. Cloud Way shall be improved with street improvements including curb, gutter a 10-foot-wide sidewalk adjacent to the back of sidewalk and a street paving designed to public street standards. The street shall have a 48-foot-wide curb-to-curb section.
  - b. Construct a 10-foot-wide sidewalk abutting the back of curb along the West Winton Avenue frontage.
  - c. Construct a 6-foot-wide sidewalk abutting the back of curb along the Corsair Boulevard frontage.
  - d. The existing driveways along West Winton Avenue frontage shall be replaced with standard curb, gutter and sidewalk.
  - e. Any broken sidewalk along the property frontage that creates a tripping hazard shall be removed and replaced.
  - f. Construct handicap ramps at the corner of Cloud Way and West Winton Avenue and Corsair Boulevard and West Winton Avenue.
  - g. The proposed driveways on Corsair Boulevard and Cloud Way shall be constructed in accordance with standard detail SD-110.
  - h. The two existing street lights mounted on the joint poles along the west Winton Avenue frontage shall be removed and replaced with standard electroliers. The design and location to be approved by the City Engineer.
  - i. Install a new standard electrolier on Cloud Way. The design and location to be approved by the City Engineer.
  - j. Concert the storm water inlet at the northeast corner of West Winton Avenue and Cloud Way into a manhole and construct a new storm water inlet at 2.75 feet from the curb. The design and location to be approved by the City Engineer.
  - k. The fire hydrant on Cloud Way shall be relocated two feet from the face of curb.
  - l. All electrical wires and transformers shall be underground.

**Landscape Architect:**

20. Prior to building permit approval a detailed landscape and irrigation plan shall be approved by the City's Landscape Architect. Plans shall be prepared by a licensed landscape architect.

21. All street trees shall be a minimum 24-inch box specimen trees. Cutouts for street trees shall be five feet by five feet.
22. Provide an arborist report for all existing trees. Trees shall be maintained in place. If the trees are proposed for removal mitigate with trees of equal value and size.

**Fire Department:**

23. A fire sprinkler system shall be installed per NFPA 13 Standards.
24. Provide fire protection for all commercial cooking equipment (hood and exhaust ducting). Fire protection systems shall meet NFPA 96 or other applicable standards for installation.
25. Provide portable fire extinguishers throughout the building with a minimum rating of 2A:10BC in locations as approved by the Fire Department. The kitchen shall have Class K type fire extinguisher(s) and/or 40:BC type fire extinguisher(s) within 30' of the cooking equipment.
26. Central station monitoring is required for the fire sprinkler and fire protection systems.
27. A dedicated underground fire service line shall be installed as per NFPA 24 Standards and City of Hayward Details.
28. Interior exiting and exit lighting shall meet the CBC, Chapter 10.
29. Exit plans shall be posted in appropriate locations.
30. Occupant load signage shall be installed in applicable dining areas within the restaurant. Final occupant loads shall be determined on the plans by the architect and shall reflect both a seating factor (15 sq. ft. per person) and a standing factor (7 sq. ft. per person).
31. Interior decorative materials shall be flame treated.
32. Separate fire permits area required for the installation of the automatic fire sprinkler system, underground fire service line, and the fire protection system for cooking equipment.
33. An annual Fire Department permit for Place of Assembly shall be obtained prior to certificate of occupancy.

**Police:**

34. The sale, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 a.m. and midnight each day of the week.
35. Full meals must be made available from 10:00 a.m. through 10:00 p.m. each day of the week and a light menu must be available during all business hours.
36. Minors are not allowed in or on any portion of the business under control of licensee(s) after 10:00 p.m. each day of the week. This includes all areas of the property including the building, patios and parking lots.

37. Music, live or recorded, is permitted between the hours of 10:00 a.m. until 10:00 p.m. Sunday through Thursday and between the hours of 10:00 a.m. and midnight on Friday and Saturday nights. No noise from said entertainment shall be audible from the exterior of the premises.
38. No cover charge will be charged at the door for any event.
39. During all nightclub activities and during special events the establishment shall provide one uniformed security guard for every 100 patrons based on the capacity of the building. The security guards shall be licensed by the California State Department of Consumer Affairs. This requirement may be increased or decreased at the discretion of the Chief of Police.
40. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
41. Consumption of alcoholic beverages outside of the main building is strictly prohibited.
42. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO LOITERING IS ALLOWED ON OR IN FRONT OF  
THESE PREMISES**

43. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE  
ALLOWED ON THESE PREMISES**

44. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application. If the graffiti occurs on a Friday, weekend day or holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.
45. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.
46. At all times when alcoholic beverages are available, food prepared in the kitchen must also be available to customers. Full course meals shall be available until 10:00 PM and appetizers shall be available until closing.
47. The front door(s) shall be kept closed at all times during the operation of the premises except in the cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.



48. The owner of the establishment shall be responsible for the hiring of entertainers. The night club facility may not be rented to an outside independent promoter.
49. Noise generated by the establishment or its patrons shall not exceed ambient noise levels beyond the project site.
50. The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief, which may include the hiring of security guards.
51. There shall be no adult entertainment as defined by Zoning Ordinance Section 10-1.2735 (a). In addition, there shall be no fashion shows unless authorized by the Chief of Police and the Planning Director.

**Revocation:**

52. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for revocation of this permit.
53. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

## MINUTES



REGULAR MEETING OF THE PLANNING  
COMMISSION, CITY OF HAYWARD  
Council Chambers  
Thursday, June 3, 2004, 7:30 P.M.  
777 "B" Street, Hayward, CA 94541

## MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermefio, followed by the Pledge of Allegiance.

## ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Thnay  
CHAIRPERSON Zermefio  
Absent: COMMISSIONER One Vacancy

Staff Members Present: Anderly, Conneely, Koonze, Looney, Patenaude

General Public Present: Approximately 16

## PUBLIC COMMENT

Chairperson Zermefio introduced former Planning Commissioner, now Council Member, Halliday who was awarded a Resolution from the Commission for her eight years of service.

Council Member Halliday said she was proud and happy to have been a part of the Commission for so many years. You learn a lot and serve the City well.

Al Mendall, Citizens Advisory Commission (CAC), said he would not be able to stay for Item 2, but discussed the funding for the Eden Housing Project on tonight's agenda. He recommended approval of the item, saying it was a good project for the City of Hayward.

## AGENDA

1. Use Permit No. PL-2002-0099 - Robert Lavassani (Applicant/Owner) - Request to Construct a Restaurant With a Bar and Night Club - The Project is Located at 1705 West Winton Avenue
2. I. Zone Change PL 2004-0188 - Request to Amend the Zoning District from Neighborhood Commercial (CN) to High Density Residential (RH)  
II. Site Plan Review PL-2004-0191 - Request to Construct 57 Affordable Family Apartments;  
III. Exception PL-2004-0192 - Request to Reduce the Required Number of Parking Stalls From 117 to 101; and  
IV. Request to Vacate a Portion of Lafayette Street and Reconfigure Lot Lines to Create One Parcel

Eden Housing, Inc. (Applicant), Estate of Ross S. Rasmussen (Owner). The Project is Located at 32519, 32525 and 33527 Mission Boulevard

## PUBLIC HEARINGS

1. Use Permit No. PL-2002-0099 - Robert Lavassani (Applicant/Owner) - Request to Construct a Restaurant With a Bar and Night Club - The Project is Located at 1705 West Winton Avenue

Assistant Planner Koonze described the application, noting that the Planning Commission first reviewed the application on January 8, 2004, noting that the Commission asked for changes in the plans as well as asked staff to prepare conditions and findings in order to approve the project. He discussed the changes in the design to eliminate all parking and setbacks variances. However, Staff is not pleased with the color of the metal roof. They are also concerned with the columns size and design as well as further changes to the windows. Staff recommended approval of the Use Permit subject to findings and conditions of approval.

Commissioner Bogue asked about the removal of the cover charge and whether it would be appropriate to remove it.

Assistant Planner Koonze responded that the Police Department is satisfied with the proposed security measures and therefore staff is recommending lifting the restriction of the cover charge.

The public hearing opened at 7:40 p.m.

Jay Yinger, representing the applicant noted that they disagree with the three design suggestions, particularly the roof color. The idea is for a contrast with the warm tones of the body of the building, and cooler tones on the roof. As to the sash around the windows, they are olive green. He suggested they might reverse them, an olive green on the roof and gray on the windows. The columns are more of a landscape feature enhancement and stone would make them too wide and too large. He said he asked for a clarification of the window trim. They have a sash and don't know what trim staff would want.

David Cota, COMPREE, said they are supporting this as a quality restaurant but not a nightclub at this location. He commented that there was not enough time for the community to respond once the notice was received. He requested notification further in advance. He said they also disagreed with a number of conditions regarding the Alcohol consumption and the area. He emphasized that they do not support this nightclub application, but would support the restaurant only. He discussed the license types for this business. Hayward does not need another problem nightclub.

The public hearing closed at 7:49 p.m.

Chairperson Zermeño asked whether staff could send more timely notice for the public.



Planning Manager Anderly responded that staff actually sends out notices when the application arrives and then again when it is to be heard 10-days in advance.

Commissioner Sacks asked about the two licenses to which Mr. Cota referred, 47 and 48.

Assistant Planner Koonze responded that the number is there to cover the proposed use.

Commissioner Sacks commented that one is specifically saying it forbids minors and one includes them. She said she just was not clear at the moment.

Assistant Planner Koonze emphasized that the condition covers the usage and intent but if the Commission wants to make a change, they can.

Commissioner Sacks added that it has always been a mystery that minors can be allowed where alcohol is served. She suggested clarification of the allowance of minors in the establishment.

Assistant Planner Koonze pointed to further conditions like Condition 36, minors will not be allowed after 10 p.m. The nightclub music cannot start until after 10 either.

Commissioner Thnay asked the police input into the item and also about other licenses in the area.

Assistant Planner Koonze said the police comments are expressed in the conditions of approval and support the project as long as they have security and the music restrictions. He then showed the number of alcohol selling establishments in the area. The majority of this census tract is industrial. The liquor licenses are spread out in this area. None of them in the area is associated with a nightclub.

Planning Manager Anderly reported that she met with the Acting Chief of Police. The Condition of Approval regarding the hours of operation was their major concern. With them closing at midnight each night, they were convinced they could handle this.

Chairperson Zermefio asked Commissioner McKillop whether minors could go into her restaurant to eat even though wine is sold.

Commissioner McKillop stated that having gone through this process herself and working with the ABC, the Planning Department and the Police Department, she is confident about the process and the departments involved.

Commissioner Bogue explained that the rules of the Alcoholic Beverage Commission might apply even more. The license requires mealtimes and that it functions as a restaurant. He suggested license 47 is the more appropriate one to have. Condition 34 explains the limitations

of the times alcohol can be sold. He questioned the metal roof and thought composition shingle would make more sense. The color does not bother him.

Commissioner Fraas said she liked the roof. It's a modern design. She also thanked the applicant for trying to meet the conditions from before. She then moved, seconded by Commissioner McKillop, the staff recommendation. She added to her motion to take away conditions 9, 10, and 11.

Commissioner Thnay agreed that 9, 10, and 11 are not that major. He said seems like the columns fit in with contrast and nature of the building, and appeared to be the right scale. He thanked the applicant for bringing back something of high quality, which will enhance the City of Hayward.

Commissioner Sacks added some comments on condition 9, regarding the term 'earth tones'. She suggested it is a meaningless term since there are many colors on this earth. She suggested that the applicant take a closer look at the pencil thin columns. They do not seem in scale with rest of the building. However, she would support the motion.

Commissioner McKillop said simply she would support the motion.

Chairperson Zermeno thanked COMPREE for being involved. He said he is not worried that this project will saturate alcohol sales in Hayward.

The motion passed unanimously, 6:0, with one vacancy.

2. ~~I. Zone Change PL 2004-0188 - Request to Amend the Zoning District from Neighborhood Commercial (CN) to High Density Residential (RH)~~
- ~~II. Site Plan Review PL-2004-0191 - Request to Construct 57 Affordable Family Apartments;~~
- ~~III. Exception PL-2004-0192 - Request to Reduce the Required Number of Parking Stalls From 117 to 101; and~~
- ~~IV. Request to Vacate a Portion of Lafayette Street and Reconfigure Lot Lines to Create One Parcel~~

Eden Housing, Inc. (Applicant), Estate of Ross S. Rasmussen (Owner). The Project is Located at 32519, 32525 and 33527 Mission Boulevard

Planning Manager Anderly noted the proposed zoning is complementary to the surrounding neighborhood and the intended zoning and complies with the policy of the General Plan. Staff supports a recommendation to the City Council to change in the zoning. She showed photos of the neighborhood and explained how the project would fit into the area. She described the designs of the underground parking area and various amenities. To increase usable open space, revisions to the plan now include balconies and patios in many of the units. A required finding to support a parking exception includes "hardship". Studies have shown that with this type of low-income housing, the number of vehicles associated with the units would be less. There is public transportation in front of the building, which will encourage residents to use it. The project will use more wood and stucco. Many of the lower floor units are one-story flats and the upper units



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 06/03/04  
Agenda Item 1

**To:** Planning Commission

**From:** Tim R. Koonze, Assistant Planner

**Subject:** PL-2002-0099 Use Permit – Robert Lavassani (Applicant/Owner) – Request to Construct a Restaurant with a Bar and Night Club – Property is Located at 1705 West Winton Avenue in an Industrial (I) District

### RECOMMENDATION:

Staff recommends that the Planning Commission find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15332, Class 32, Infill Development Projects in Urban Areas, and approve the Use Permit Application subject to the attached findings and conditions of approval.

### DISCUSSION:

This application went before the Planning Commission on January 8, 2004 with a staff recommendation to deny the project because of the proposed parking exception and the landscape setback variance. The application included requests for variances to reduce the landscape setback along the West Winton Avenue street frontage and for an exception to reduce the required number of parking stalls. The Planning Commission unanimously decided to support the restaurant use but not the proposed variances. The Commission asked the applicant to redesign the project without variances and directed staff to prepare findings and conditions of approval, and bring the application back before the Planning Commission.

The proposal includes a bar and nightclub. The owner intends on providing both recorded and live music. No cover charge will be charged at the door for any event. Conditions of approval limit the hours the music can be played to between 10:00 a.m. and 10:00 p.m. Sunday through Thursday and from 10:00 a.m. to midnight on Fridays and Saturdays. Alcohol sales are limited to the hours of 10:00 a.m. through midnight every night.

Minors are not allowed in any portion of the business after 10:00 p.m. Full meals must be made available from 10:00 a.m. through 10:00 p.m. each day of the week and a light menu must be available during all business hours. The issues relating to the sale of alcohol at this site was addressed in the report prepared for the previous public hearing (see attachment D).

### Site and Building Design

The site layout has been redesigned to meet the required setback and parking requirements. The building remains centered along the north property line but as a result of the site modifications, the building footprint and architecture have been modified.

The revised site design meets parking and landscape setback requirements while providing a better circulation pattern. To conform to the parking and setback requirements, the walkway connecting West Winton Avenue to the restaurant has been eliminated and the percentage of compact parking spaces has increased from 36 to 49 percent, up to 50 percent is allowed in the industrial district.

The building design has been modified to include a two-story design that puts office and storage on the second floor over the restaurant and bar-related activities on the first floor. The exterior design has been changed to a more contemporary Mediterranean style which includes modifying the roof from a barrel-tile roof to a standing-seam metal roof.

It is staff's opinion that the metal roof is suitable for the industrial setting. However, the applicant is proposing the roof color to be gun metal gray; staff recommends that the color be modified to be more complimentary to the earth-toned restaurant. The depth of the entrance feature has been reduced and 6-inch x 6-inch wood columns are proposed instead of the decorative stone columns shown on previous designs. Although the depth reduction still allows for a sufficient entry feature, staff recommends the stone columns be utilized or heavier timbers with a decorative base to better accentuate the entry feature. Also, the trellis columns should share the same decorative design to add consistency to the project. Staff also recommends the addition of a trim element around the windows. These recommendations have been reflected in the attached conditions of approval. Although these changes were recommended to the applicant, he indicated a preference to not modify the proposed design.

### Environmental Review

It has been determined that this project is categorically exempt from the guidelines of the California Environmental Quality Act, pursuant to Section 15332; Class 32 Infill development projects in urban areas.

### Public Hearing Notice

On May 24, 2004, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the property as noted on the latest assessor's records, and to all parties having previously expressed an interest in this project including Commpre (Community Prevention of Alcohol Related Problems). No responses were received from this notice.

Four neighbors spoke during the January 8, Planning Commission meeting; two neighbors favored the project and thought the project would be beneficial to the area although one of them shared some concern regarding the alcohol sales and the hours of operation. A representative of Commpre expressed concerns of noise, lack of parking and alcohol sales. Another citizen was concerned about increased traffic and felt the nightclub might create an atmosphere for a rowdy crowd.

### Conclusion

The restaurant, bar, and nightclub use was endorsed by the Planning Commission when they originally reviewed this project but the proposed variances were not supported. The applicant has revised the plan to eliminate the parking exception and landscape setback variance and has proposed a project that has more efficiently utilized the property. Although the general design of the restaurant is acceptable, staff recommends that improvements be made to the columns and window trim to accentuate these features and to modify the roof color to be more consistent to the earthy tones of the restaurant.

Prepared by:

Tim R. Koonze  
Tim R. Koonze  
Assistant Planner

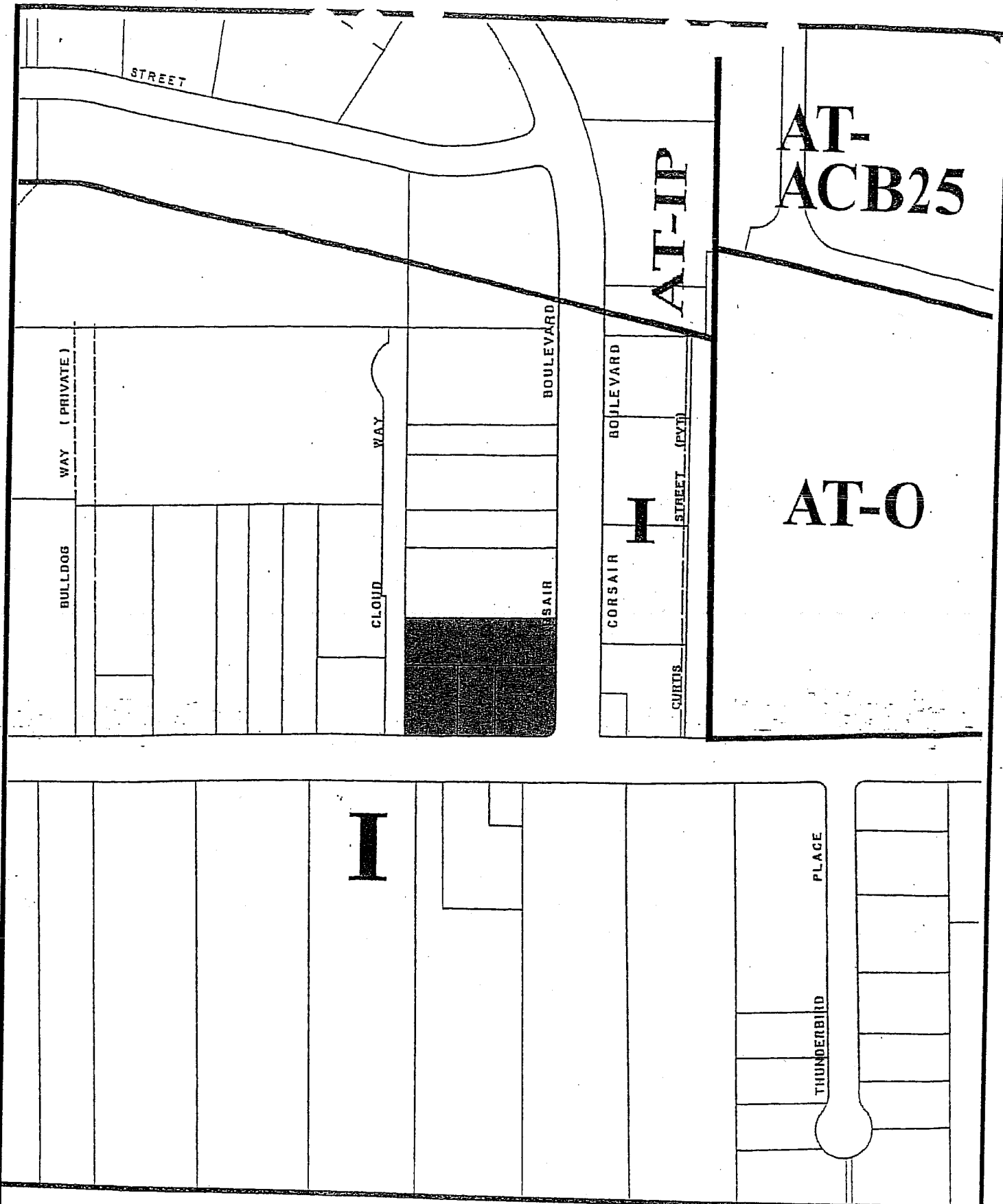
Recommended by:

Dyana Anderly  
Dyana Anderly, AICP  
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Staff Report & Minutes January 8, 2004 Planning Commission Plans





**Area & Zoning Map**

PL-2002-0098/0099 UP/VAR

Address: 1705 W Winton Ave

Applicant: Robert Lavassani

Owner: Robert Lavassani & Remo Buti

## FINDINGS FOR APPROVAL

Use Permit No. PI-2002-0099  
Robert Lavassani (Applicant/Owner)

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15332, Class 32, Infill Development Projects in Urban Areas.
- B. The proposed restaurant is desirable for the public convenience and welfare as it will provide a needed service to an area deprived of eating establishments.
- C. The proposed restaurant will not impair the character and integrity of the zoning district and the surrounding area as the use is permitted by the zoning ordinance with approval of a site plan review and the restaurant's busiest hours of operation are evenings and weekends when surrounding uses are closed.
- D. The proposed restaurant will not be detrimental to the public health, safety or general welfare as it is regulated by the Alameda County Department of Environmental Health and a condition of approval will require the restaurant manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief.
- E. The project use is in harmony with applicable City Policies in that the building incorporates design elements that are harmonious and in proportion to one another, articulates entries and windows along street frontages and creates shadow relief with off-setting walls, columns and trellises.
- F. The proposed use is in harmony with the intent and purpose of the industrial zoning district in that it helps promote a desirable work environment in that it serves the need of the employees to neighboring businesses by providing a eating establishment which is lacking in the area.
- G. Allowing the sale of alcohol at this location will not result in an undue concentration of establishments dispensing alcoholic beverages in the area as there is one deli ¼ of a mile from the site and the next nearest sale of alcohol occurs over a mile away.
- H. Allowing the sale of alcohol at this location will not detrimentally affect the surrounding neighborhood given there are no residential neighborhoods, churches, schools, public playgrounds, parks, recreational centers or similar uses located near this site.

## CONDITIONS OF APPROVAL

Use Permit No. PL-2002-0099  
Robert Lavassani (Applicant/Owner)

### General:

1. Application No. PL-2002-0099 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business license has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. If a building permit is issued for construction of improvements authorized by the Use Permit approval, the Use Permit approval shall be void two-years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Use Permit approval.
3. All improvements indicated on Exhibit "A", are hereby approved and must be installed prior to authorization for final building occupancy. In addition, all improvements shown on Exhibit "A" of PL-2002-0098 UP shall be completed prior to occupancy.
4. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
5. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
6. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
7. The establishment shall operate only as a License Type 47 per the State Department of Alcoholic Beverage Control regulations.
8. All signs shall comply with the Sign Ordinance regulations for the Industrial District. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director.

9. The roof shall be a color that is consistent with the earth tones of the restaurant. The color shall meet the approval of the Planning Director.
10. The columns used for the entry feature and trellis shall be decorative columns utilizing heavy timber accented with a decorative base. The design shall meet the approval of the Planning Director.
11. The windows shall incorporate a trim element that compliments the restaurant design. The window treatment shall meet the approval of the Planning Director,
12. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
13. Exterior lighting shall be provided for the exterior of the premises, including adjacent public sidewalks and the parking areas under control of licensee(s). The level of lighting shall comply with the City of Hayward Security Ordinance. The lighting shall operate during all hours of darkness during, which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel. However, the positioning of such lighting shall not disturb the normal privacy and use of the adjoining properties. The design and location of lighting fixtures shall meet the approval of the Planning Director.
14. No pay phones shall be permitted on the exterior of the building or premises.
15. The establishment shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall that reflects the design of the restaurant and screens the trash enclosure from the view of abutting properties or the public right-of-way. The design shall meet the approval of the Planning Director.

**Solid Waste & Recycling:**

16. This approval is subject to the requirements contained in the memo from the Solid Waste and Recycling Division of the Public Works Department dated 6/13/03.

**Public Works:**

17. Prior to connection to the City of Hayward sanitary sewer main the applicant must purchase additional sewer system capacity to accommodate the volume and waste strength of waste water to be discharged from the restaurant.

**Engineering:**

18. Prior to issuance of a building permit:
  - a. A lot line adjustment shall be approved or a parking easement acquired to accommodate the parking that is show on the adjacent property to the north. The document(s) shall be approved by the City Engineer.

- b. The owner shall dedicate a 14-foot-wide strip of land across the Cloud Way frontage for the purpose of street right-of-way.
  - c. A grading and drainage plan shall be submitted that meets the approval of the City Engineer. The plans shall include the storm drain system layout and shall show all pipe lengths, sizes and inverts, grates and outfall areas. The storm drain shall have a Best Management Practice structures (CDS and/or CRS or equal) prior to connecting to the public storm drain system.
  - d. Hydraulic calculations shall be submitted that meet the approval of the City Engineer.
19. Prior to connection of utilities:
- a. Cloud Way shall be improved with street improvements including curb, gutter a 10-foot wide sidewalk adjacent to the back of sidewalk and a street paving designed to public street standards. The street shall have a 48-foot-wide curb-to-curb section.
  - b. Construct a 10-foot-wide sidewalk abutting the back of curb along the West Winton Avenue frontage.
  - c. Construct a 6-foot-wide sidewalk abutting the back of curb along the Corsair Boulevard frontage.
  - d. The existing driveways along West Winton Avenue frontage shall be replaced with standard curb, gutter and sidewalk.
  - e. Any broken sidewalk along the property frontage that creates a tripping hazard shall be removed and replaced.
  - f. Construct handicap ramps at the corner of Cloud Way and West Winton Avenue and Corsair Boulevard and West Winton Avenue.
  - g. The proposed driveways on Corsair Boulevard and Cloud Way shall be constructed in accordance with standard detail SD-110.
  - h. The two existing street lights mounted on the joint poles along the west Winton Avenue frontage shall be removed and replaced with standard electroliers. The design and location to be approved by the City Engineer.
  - i. Install a new standard electrolier on Cloud Way. The design and location to be approved by the City Engineer.
  - j. Convert the storm water inlet at the northeast corner of West Winton Avenue and Cloud Way into a manhole and construct a new storm water inlet at 2.75 feet from the curb. The design and location to be approved by the City Engineer.
  - k. The fire hydrant on Cloud Way shall be relocated two feet from the face of curb.
  - l. All electrical wires and transformers shall be underground.

**Landscape Architect:**

20. Prior to building permit approval a detailed landscape and irrigation plan shall be approved by the City's Landscape Architect. Plans shall be prepared by a licensed landscape architect.
21. All street trees shall be a minimum 24-inch box specimen trees. Cutouts for street trees shall be five feet by five feet.
22. Provide an arborist report for all existing trees. Trees shall be maintained in place. If the trees are proposed for removal mitigate with trees of equal value and size.

**Fire Department:**

23. A fire sprinkler system shall be installed per NFPA 13 Standards.
24. Provide fire protection for all commercial cooking equipment (hood and exhaust ducting). Fire protection systems shall meet NFPA 96 or other applicable standards for installation.
25. Provide portable fire extinguishers throughout the building with a minimum rating of 2A:10BC in locations as approved by the Fire Department. The kitchen shall have Class K type fire extinguisher(s) and/or 40:BC type fire extinguisher(s) within 30' of the cooking equipment.
26. Central station monitoring is required for the fire sprinkler and fire protection systems.
27. A dedicated underground fire service line shall be installed as per NFPA 24 Standards and City of Hayward Details.
28. Interior exiting and exit lighting shall meet the CBC, Chapter 10.
29. Exit plans shall be posted in appropriate locations.
30. Occupant load signage shall be installed in applicable dining areas within the restaurant. Final occupant loads shall be determined on the plans by the architect and shall reflect both a seating factor (15 sq. ft. per person) and a standing factor (7 sq. ft. per person).
31. Interior decorative materials shall be flame treated.
32. Separate fire permits area required for the installation of the automatic fire sprinkler system, underground fire service line, and the fire protection system for cooking equipment.
33. An annual Fire Department permit for Place of Assembly shall be obtained prior to certificate of occupancy.

**Police:**

34. The sale, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 a.m. and midnight each day of the week.
35. Full meals must be made available from 10:00 a.m. through 10:00 p.m. each day of the week and a light menu must be available during all business hours.
36. Minors are not allowed in or on any portion of the business under control of licensee(s) after 10:00 p.m. each day of the week. This includes all areas of the property including the building, patios and parking lots.
37. Music, live or recorded, is permitted between the hours of 10:00 a.m. until 10:00 p.m. Sunday through Thursday and between the hours of 10:00 a.m. and midnight on Friday and Saturday nights. No noise from said entertainment shall be audible from the exterior of the premises.
38. No cover charge will be charged at the door for any event.
39. During all nightclub activities and during special events the establishment shall provide one uniformed security guard for every 100 patrons based on the capacity of the building. The security guards shall be licensed by the California State Department of Consumer Affairs. This requirement may be increased or decreased at the discretion of the Chief of Police.
40. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
41. Consumption of alcoholic beverages outside of the main building is strictly prohibited.
42. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO LOITERING IS ALLOWED ON OR IN FRONT OF  
THESE PREMISES**

43. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE  
ALLOWED ON THESE PREMISES**

44. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application. If the graffiti occurs on a Friday, weekend day or holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.

45. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.
46. At all times when alcoholic beverages are available, food prepared in the kitchen must also be available to customers. Full course meals shall be available until 10:00 PM and appetizers shall be available until closing.
47. The front door(s) shall be kept closed at all times during the operation of the premises except in the cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.
48. The owner of the establishment shall be responsible for the hiring of entertainers. The night club facility may not be rented to an outside independent promoter.
49. Noise generated by the establishment or its patrons shall not exceed ambient noise levels beyond the project site.
50. There shall be no adult entertainment as defined by Zoning Ordinance Section 10-1.2735 (a). In addition, there shall be no fashion shows unless authorized by the Chief of Police and the Planning Director.

**Revocation:**

51. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for revocation of this permit.
52. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.





## CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 1/8/04

Agenda Item       

**TO:** Planning Commission

**FROM:** Carl T. Emura, Associate Planner

**SUBJECT:** Conditional Use Permit Application No. PL 2002-0098 – Request to Construct a Restaurant With a Bar and Operate a Night Club

Variance No. PL 2002-0099 – To Allow a Reduction in the Front Setback From 20 Feet to 14 Feet

Parking Exception - Request to Waive the 15 Percent Tractor/Trailer Parking Requirement and to Reduce the Parking Requirement from 72 Spaces to 67

Robert Lavassani (Applicant/Owner)

The Property is Located at 1705 West Winton Avenue in the Industrial (I) District

### RECOMMENDATION:

As the staff does not support the variance request or parking exception, denial of the project is recommended, subject to the attached findings. If a project is denied, environmental review is not required under the California Environmental Quality Act (CEQA).

### DISCUSSION:

The site contains 3 parcels along West Winton Avenue, owned by the applicant, and a portion of a parcel (6,750 square feet) adjacent to the site leased (30 years) to the applicant. The building on the portion of the leased parcel would be demolished to provide an area for parking associated with the restaurant. The total site area contains 44,012 square feet. Three streets bound the site, West Winton Avenue to the south, Corsair Boulevard to the east and Cloud Way to the west. As a condition of development, the applicant would be required to dedicate a 14-foot strip of his parcel along Cloud Way for street widening. The site is currently occupied with legal nonconforming single-family and multi-family dwellings (Residential use is not permitted in the Industrial District). The area is predominately developed with industrial building, although there are also legal nonconforming residential structures in the vicinity

(across Corsair Boulevard and across West Winton Avenue). The property is zoned *Industrial (I)*, and the General Plan Designation is *Industrial Corridor*.

### Proposal

The applicant proposes to construct a 5,100 square-foot, 180-seat full-service restaurant with a bar. The structure would cover approximately 11.6 percent of the site. In order to accommodate the project, the legal, nonconforming four-unit apartment building and two, legal, nonconforming single-family dwellings will be razed. The architecture of the residential structures (c. 1940s) is insignificant. Most of the eating establishments in the Industrial District cater to the breakfast and lunch crowd. The applicant proposes to establish a full-service restaurant and bar, including an area for banquets and live entertainment. In addition to lunch the facilities would remain open during the evenings and weekends. The restaurant and bar would operate Monday through Friday, from 11 am to midnight. The restaurant and bar would be available for banquets on Saturday and Sunday from 11 am to midnight. The restaurant would serve American and International food.

In order for a bar to be considered, the Zoning Ordinance requires that the applicant apply for a conditional use permit. For a conditional use permit to be considered, the bar must be located a minimum of 500 feet from any other on-sale or off-sale liquor establishments (with the exception of exempted establishments) or of any school, public park, library, playground, recreation center, day care center or other similar use. The nearest on-site establishment is located in Raja, an Indian Restaurant and Bar, which is approximately 1,250 feet away. There are no schools, public park, library, etc within 500 feet of the proposed establishment.

The California Department of Alcoholic Beverage Control (ABC) indicates that there is an over-concentration of liquor licenses in Census Tract 4371 in which subject property is located. There are nine on-site establishments with liquor licenses and five off-site establishments with liquor licenses where only a total of seven are allowed. In order to secure licenses in census tracts identified as having an over-concentration of liquor licenses, ABC requires a Letter of Public Convenience or Necessity from the city in which the establishment is located. Census Tract 4371 spans the whole stretch of the Industrial District west of Hesperian Boulevard, including the Hayward Executive Airport and the residential area south of Highway 92 and west of Hesperian Boulevard. Some of the business with liquor licenses in this census tract, include Russell City Grill (Clawiter Road), Airport Deli (Corsair Boulevard), Kaiser Foundation Hospital (Hesperian Boulevard), Linda Flowers (Depot Road) and Signature Wine Cellars (Barrington Court). The number of residents in a census tract determines the number of liquor licenses allowed, and there are relatively few residents in this census tract. Because the liquor establishments are dispersed over a very large area where there are very few residents, and the industrial area is underserved by full-service restaurants, staff is supportive of providing a letter of public convenience.

Should the Planning Commission approve a bar and live entertainment, the Hayward Police Department would recommend limiting the hours of alcoholic beverage sales from Sunday to Thursday to 10 am to 10 pm and on Friday and Saturday from 10 am to midnight. They would also recommend that no cover charge be collected at the door for any event and would require a minimum of two California Department of Consumer Affairs licensed security guards when providing live entertainment.

The proposed design of the restaurant façade has a Mediterranean flavor, with a rich mixture of textures and ornamentations. It would be a linear form, set parallel to the adjacent building with a two-story tower and covered entry way. The restaurant would have a skylight located over a part of the dining area. The bar/lounge would be located front and left of the lobby and the restrooms would be located front and right of the lobby. A wall of windows would be located along the lounge area facing the east side of the building. Generally staff finds the design attractive but believes the entry tower is out of proportion with the rest of the building when viewed from West Winton Avenue.

The restaurant would have vehicular access on Cloud Way and Corsair Boulevard. Only a right hand turn into the site and left hand turn out of the site would be allowed on Corsair Boulevard as a landscape median separates north and south bound lanes. Scattered landscape planters would be provided along the exterior of the restaurant and along the perimeter of the site.

#### Variance

A 20-foot front yard landscaped setback is required along West Winton Avenue (a 20-foot front yard setback is required along corridor streets in the Industrial District), and the applicant proposes a 14-foot front yard setback, which requires approval of a variance. Typically, there is at least 22.5 feet of landscaping along the front property line as 2.5 feet are used for vehicle overhang. (The 2.5 feet cannot be counted toward meeting the 20-foot setback as vehicles overhang this area.) The applicant is proposing to install a 16.5-foot deep landscaped front yard, which includes 2.5 feet for the vehicle overhang.

The applicant believes that the 14-foot street dedication on Cloud Way severely reduces the developable area of his property and that he is further constrained by landscape setback requirements on three sides of his corner property, where interior lots typically have only one front-yard landscaped setback. For these reasons, he believes that a variance to the front yard landscape requirement is justified. Staff concurs that the site is constrained by the three street frontage setback requirements; however, adequate space remains to construct a restaurant on the site without the need for a variance. Moreover, given its prominent location along a major arterial and at the entry to an industrial park, in staff's opinion a minimum 20-foot front yard setback is important to create an attractive streetscape and setting for a restaurant. Further, because the property is flat and generally rectangular in shape and considering that no variances for a reduction of the front yard setback has been approved in this area since the adoption of the requirement for a 20-foot front setback along corridor street in the Industrial District, staff does not support approval of the variance.

### Parking Exception

The parking requirement for restaurant is one parking stall for each three seats in the dining area, plus one parking stall for each 200 square-feet in the remaining portions of the restaurant. For the proposed restaurant with 189 seats in the dining area, 72 parking stalls area required. The applicant is requesting a parking exception to allow for a reduction in the number of parking spaces required. Only 67 of the 72 required parking stalls would be provided on site. An additional 13 parking spaces would be available along West Winton and Cloud Way. In addition the applicant is requesting to waive the 15 percent truck/ trailer parking requirement. In the Industrial District, at least 15 percent of the parking is required to accommodate tractor/trailer combinations if the site abuts a street that has no parking lane on either side of the street. In this instance, parking is currently available on both sides of West Winton Avenue as well as Cloud Way, so the requirement for on-site truck parking does not apply. There are signalized crosswalks across at the intersection of West Winton Avenue and Corsair Boulevard, which allows for safe crossing across West Winton Avenue.

In regard to the parking reduction, there are two bus stops, on both sides of West Winton Avenue, approximately 100 to 150 feet from the site. However, the bus stops must be adjacent to the site in order to allow for a reduction in the number of required parking spaces, and the limited bus service to the area would make it difficult to consider a bus as a viable transportation alternative to a diner or restaurant employee. Regardless of the proximity to public transportation, staff believes the parking requirements could be met if the restaurant were redesigned.

Unlike variances, parking exceptions may be granted where unnecessary or unusual hardship is shown and where the exception will not defeat the purposes of parking or zoning ordinance. In this case, staff believes the project could be redesigned so that the parking requirement could be met and to not require adequate on-site parking could result in impacts on adjacent properties, especially when banquets are held or should the nightclub prove to be very popular.

### Environmental Review

A project that is denied does not require review under the California Environmental Quality Act (CEQA). Should the Planning Commission wish to approve the project, staff will have to prepare the appropriate environmental documents and conditions of approval for review at a later date

### Public Notice


On, February 21, 2002, an Official Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. The city received two responses against the application in response to the official notice. Both individuals cited concerns about the bar, increased traffic and noise.

On December 29, 2003 a Public Hearing Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. CommPre responded to the notice and recommended denial of the application indicating the increase traffic and noise would adversely affect the existing homes in the surrounding area and because of the location, patrons would be required to drive to and from the restaurant/bar/nightclub, which would increase the risk of driving while intoxicated. With regard to nearby housing, there is a legal, nonconforming single-family dwelling a little over 100 feet away from subject property, across West Winton Avenue, and a legal, nonconforming duplex approximately 130 feet away also across West Winton Avenue. A legal, nonconforming single-family dwelling is situated approximately 90 feet away across Corsair Boulevard. As the City's General Plan indicates that the properties on which these homes are located will eventually be developed with industrial uses, no mitigation measures are recommended that would further limit the use of the restaurant/nightclub. Because bus service is not frequent, especially during evening hours, alternative modes of transportation would be limited to taxi service.


### Conclusion

While staff is generally supportive of the design of the building as well as the full-service restaurant and nightclub in an area that is underserved by this type of facility, the project could be designed so that all minimum design and parking requirements are met. An approximately 4,800-square-foot restaurant with about 174 seats could be constructed on the site without the need for variances. For this reason, staff recommends denial of the application. Because the applicant has spent a considerable amount of time and resources and engaged two design specialists who have been unsuccessful at designing an attractive restaurant that meets the City's requirements, the applicant has been disinclined to make further investments in the design phase of the restaurant.

*Prepared by:*

  
Carl T. Emura ASLA  
Associate Planner

*Recommended by:*

  
Dyana Anderly, AICP  
Planning Manager

Attachments:

- A. Area & Zoning Map
- B. Findings for Denial
- C. Liquor Licenses in Census Tract 4371
- D. Letter from CommPre dated 12/30/03  
Plans/Elevations/Perspectives

**CITY OF HAYWARD  
PLANNING DIVISION  
January 8, 2004**

**Conditional Use Permit Application No. PL 2002-0098** – Request to construct a restaurant with a bar and live entertainment.

**Variance No. PL 2002-0099** – Request to allow a reduction in the front setback from 20'-0" Feet to 14'-0" Feet.

**Parking Exception** - Request to allow a reduction in the parking requirement from 72 to 67 parking spaces.

**Robert Lavassani (Applicant/Owner)**

**The site is located at 1705 West Winton Avenue (APN: 432 0072 004-02, 005, 006-02) and on a portion of 21670 Cloud Way (APN: 432 0072 007-04) in the Industrial (I) District**

**FINDINGS FOR DENIAL**

**Conditional Use Permit - Bar and Live Entertainment**

- A. A project that is denied does not require review under the California Environmental Quality Act (CEQA).
- B. The proposed use is not desirable for the public convenience in that adequate parking has not been provided for the proposed uses.
- C. The proposed use will impair the character and integrity of the zoning district and surrounding area in that the reduction in the front yard setback will not adequately define West Winton Avenue as a major corridor street and would be inconsistent with the front setbacks of the more recently developed properties in the vicinity.
- D. The proposed use is not in harmony with applicable City policies and the intent and purpose of the Industrial District in that it does not comply with the front setback requirements for a property along a major corridor street in the Industrial District.

#### Variance - Front Setback

- A. There are no special circumstances applicable to the property in that there is nothing unusual about the shape or topography of the site and that the applicant has demonstrated that the restaurant can be designed to comply with the front setback and parking requirement.
- B. Strict application of the Zoning Ordinance does not deprive such property of privileges enjoyed by other properties in that no other variances have been approved for the reduction of front yard setbacks on properties in the vicinity and that the restaurant can be designed to comply with the front yard setback and parking requirement.
- C. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is situated in that front setback variances have not be granted for other properties in the vicinity.

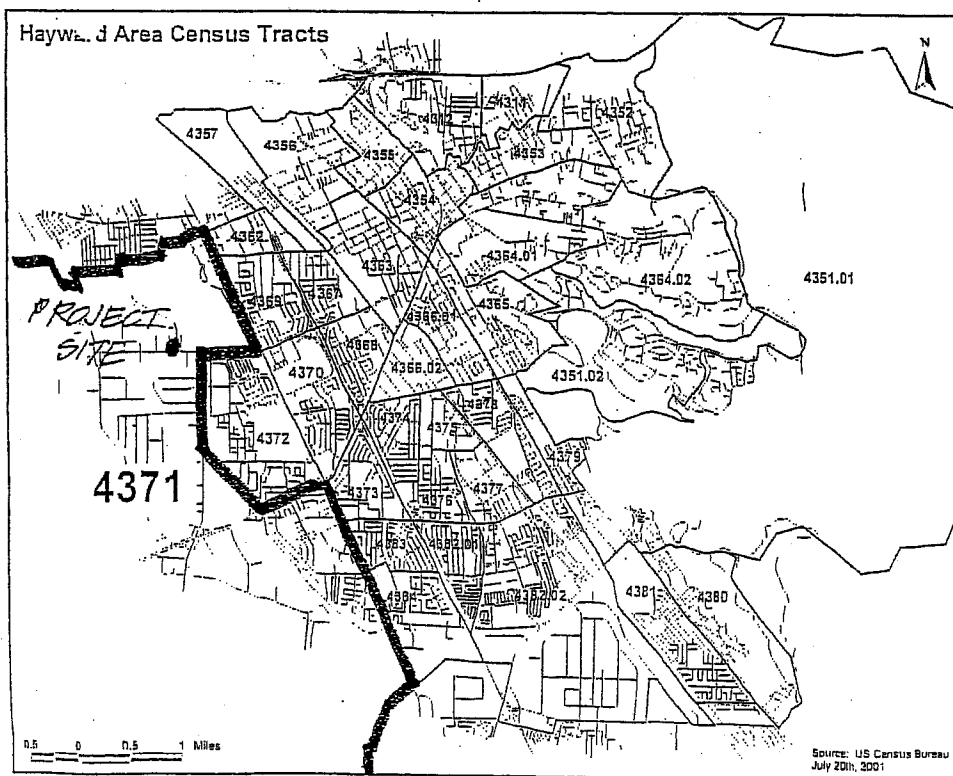
#### Parking Exception -Parking Reduction

- A. There are no special circumstances peculiar to the property in that the property does not have an unusual shape or topography.
- B. Literal interpretation of this article would not cause a hardship in that the restaurant could be redesigned to comply with the parking requirement.
- C. The granting of the exception would grant a special privilege inconsistent with the limitations on other properties in the same district as other uses have not been granted exceptions from the parking requirement.
- D. The granting of an exception will result in the parking or loading of vehicles on public streets in such a manner as to interfere with the requirements set forth in this article as nearly as is reasonably possible in that overflow restaurant parking would conflict with industrial vehicular traffic in the area.
- E. The granting of an exception will create a safety hazard or any other condition inconsistent with the purposes of this article in that this is an industrial area and West Winton Avenue is a heavily traveled thoroughfare.



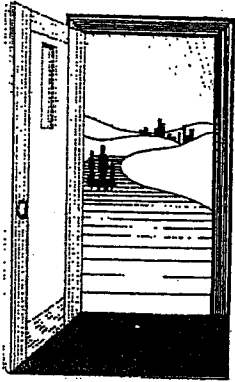
## Liquor Licenses in Census Tract 4371

| File No | Geo Dist | Type  | Type Status | Type Orig Iss Date | Expire Date | Census Tract | Primary Name Prem Street Address  | USA Mailing Address   |
|---------|----------|-------|-------------|--------------------|-------------|--------------|---|---|
| 383815  | 0106 22  | 21    | ACT         | 04-MAR-02          | 29-FEB-04   | 4371.        | KAUR SARBJEET<br>1086 A ST<br>HAYWARD CA 94541                              | EDENS LIQUOR & DELI   |
| 340182  | 0106 22  | 41    | ACT         | 08-APR-98          | 31-MAR-04   | 4371.        | PICNIC PEOPLE INC THE<br>3522 ARDEN RD<br>HAYWARD CA 94545                  | AARDVARK DELI & CATERING<br>2150 MAIN ST STE 5<br>RED BLUFF CA 96080  |
| 363854  | 0106 22  | 20    | ACT         | 27-DEC-00          | 30-NOV-04   | 4371.        | SIGNATURE WINE CELLARS INC<br>2536 BARRINGTON CT<br>HAYWARD CA 94545        | SIGNATURE WINES   |
| 383802  | 0106 22  | 20    | ACT         | 02-APR-02          | 31-MAR-04   | 4371.        | CORTEZ ROSE MARY ARAGON<br>3046 BAUMBERG AVE<br>HAYWARD CA 94545            | LITTLE STORE THE  |
| 286100  | 0106 22  | 47 58 | ACT         | 03-AUG-93          | 31-JUL-04   | 4371.        | VICENTE CATERINA SOARES<br>25037 CLAXTER RD<br>HAYWARD CA 94545             | RUSSELL CITY GRILL & CATERING COMPAN                                  |
| 291101  | 0106 22  | 41    | ACT         | 31-DEC-93          | 30-NOV-04   | 4371.        | PATEL JANAK<br>20950 CORSAIR BLVD<br>HAYWARD CA 94545                       | AIRPORT DELI  |
| 237708  | 0106 22  | 47    | ACT         | 08-JAN-90          | 31-AUG-04   | 4371.        | R & T RESTAURANT CORPORATION III<br>1401 GOLF COURSE RD<br>HAYWARD CA 94541 | SKYWEST BAR & GRILL<br>23950 MISSION BLVD<br>HAYWARD CA 94544         |
| 265135  | 0106 22  | 41    | ACT         | 27-NOV-91          | 31-DEC-03   | 4371.        | CARROWS RESTAURANTS INC<br>20413 HESPERIAN BLVD<br>HAYWARD CA 94541         | CARROWS 116<br>5788 FLEET ST STE 250<br>CARLSBAD CA 92008             |
| 333822  | 0106 22  | 41    | ACT         | 03-MAR-98          | 29-FEB-04   | 4371.        | HANFORD HOTELS LLC<br>20777 HESPERIAN BLVD<br>HAYWARD CA 94541              | HANFORD HOTELS<br>4 CORPORATE PLAZA STE 102<br>NEWPORT BEACH CA 92660 |
| 30366   | 0106 22  | 63    | ACT         | 01-APR-77          | 31-DEC-03   | 4371.        | KAISSER FOUNDATION HOSPITALS<br>27408 HESPERIAN BLVD<br>HAYWARD CA 94545    | ACCREDITATION REGULATION & LICENSING<br>OAKLAND CA 94612-3434         |
| 405645  | 0106 22  | 21    | ACT         | 25-NOV-03          | 31-OCT-04   | 4371.        | KHANGURA KAMALDEEP S<br>27445 HESPERIAN BLVD<br>HAYWARD CA 94545            | KARAVAN LIQUORS<br>43967 BOSTON CT<br>FREMONT CA 94539                |
| 342812  | 0106 22  | 41    | ACT         | 13-JUL-98          | 30-JUN-04   | 4371.        | TSE SANNA KIT<br>24546 INDUSTRIAL BLVD<br>HAYWARD CA 94545                  | JERRY TS HOFBRAU  |
| 390571  | 0106 22  | 70    | ACT         | 23-DEC-02          | 30-NOV-04   | 4371.        | VISHNU HOTELS LLC<br>25921 INDUSTRIAL BLVD<br>HAYWARD CA 94545              | QUALITY INN & SUITES  |
| 384266  | 0106 22  | 20    | ACT         | 21-MAR-02          | 29-FEB-04   | 4371.        | SHEEM SANG KEUN<br>2601 OLIVER DR<br>HAYWARD CA 94545                       | FAST STOP MARKET<br>1790 PASEO DEL CAJON<br>PLEASANTON CA 94566       |



December 30, 2003

## COMMPRE



Carl T. Emura, ASLA, Associate Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

Re: Conditional Use Permit PL 2002-0098, Variance PL 2002-0099,  
Robert Lavassani (Applicant/Owner)

Dear Mr. Emura:

22652 Second Street  
Hayward, CA 94541  
(510) 247-8207  
(510) 247-8210 fax



A program of  
Horizon Services, Inc.

I am writing to express CommPre's opposition to the granting of a ABC license to sell alcohol at 1705 West Winton Ave., Hayward, 94545.

Although the area is zoned for industrial use, there are some single and multi-family dwellings that would be adversely affected by the proposed establishment. On February 21, 2002, two individuals who live in the neighborhood opposed the application due to the increase in traffic and noise the establishment would cause. These two individuals, their families and the other families in the vicinity already bear the industrial noise and traffic every day of the week. The patrons coming to and leaving the restaurant/bar/nightclub would prolong the noise and traffic into the night, especially on the weekends.

In addition, the request to reduce the parking requirements from 72 to 67 would encourage patrons to park in the nearby residential area, which would inconvenience the residents.

The proposed establishment would be located in an industrial district, which is not an environment that would support this type of business. The area is not a walking destination; it would require patrons to drive to and from the restaurant/bar/nightclub. The industrial district is an area where the City of Hayward does not encourage nightlife activities unlike the downtown. There is a lack of other commercial uses, and there is very limited public transportation access. This type of environment will likely increase the risk of driving while intoxicated.

Lastly, there is a general concern regarding the business operations. In terms of the business' hours, CommPre strongly supports the hours of operation recommended by the Hayward Police Department. A major concern is the lack of a business plan including experience in operating similar uses. We believe that without this information, the public could not foresee whether the

proposed establishment would be an asset to the community or bring additional problems.

Therefore, we respectfully request that the Planning Commission deny this application.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "David Cota".

David Cota  
Prevention Specialist/Community Organizer



Commissioner McKillop said she would support the motion since, after looking at all the lots, this one is the most irregular.

Commissioner Bogue added that he had toured the rear yard of this property and it is the most unusual piece of property in that area. With the apartment complex is next door, he wondered whose privacy is being affected. He said he would support the motion. He also asked whether it would come back for final approval.

Assistant City Attorney Conneely explained that, because of the wording of the motion directing staff to bring back findings for approval, it would be rescheduled.

The motion passed 6:1, with Commissioner Sacks voting "No."

4. **Conditional Use Permit Application No. PL-2002-0098 / Variance No. PL-2002-0099 - Robert Lavassani (Applicant/Owner) - Request to Construct a Restaurant With a Bar and Operate a Night Club and to Allow a Reduction in the Front Setback From 20 Feet to 14 Feet - Request for a Parking Exception to Waive the 15 Percent Tractor/Trailer Parking Requirement and To Reduce the Parking Requirement From 72 Spaces to 67 - The Property is Located at 1705 West Winton Avenue**

Associate Planner Emura made the staff report describing the properties in the area adding that staff does not support the variances but does support the use permit for the bar and nightclub and banquet facilities. He showed a sketch designed by staff placing the restaurant in the corner of the property adding that no variances would be needed were they to go with this sort of design. He noted two phone calls opposing the restaurant and bar earlier. With this last notification they received four letters from neighbors opposing the bar and the nightclub. Commpre has also come out in opposition. He added that a member of the Hayward Police Department was available for questions.

Chairperson Zermeno asked about staff's objection to the tower.

Associate Planner Emura explained that the tower is out of proportion to the rest of the building. He suggested it flare out more, and maybe be wider. The dominant feature should be the entryway.

Commissioner Sacks asked whether the same architecture would be used to locate the building in the corner of the lot.

Associate Planner Emura explained that it is logical to push it toward that corner so it would accommodate more cars.

Planning Manager Anderly explained that it would have no affect on the design, just the square footage.

Chairperson Zermefio asked about a letter objecting to the location of a restaurant in this area.

Associate Planner Emura said although it is zoned industrial, that could include a full service restaurant which would be a nice feature in the area. Staff supports it, feeling that there is a need for more in the area.

Commissioner Fraas asked about the variances and what they are approving.

Associate Planner Emura indicated that the Commission would have to approve everything in order for this to go forward.

The public hearing opened at 9:05 p.m.

Jay Yinger, architect for the project, explained that they have been talking and making plans for this project for the past 3 years. He suggested that the location should not be in the corner. This had been under discussion earlier. Although West Winton is extremely busy, they feel the restaurant should be back against the warehouse to soften the view. This is not the cookie-cutter project. He described his background as having worked on hundreds of restaurants and has learned that this is not an exact science. He said they believe that by giving up a piece of their property to the City to widen the road, they should not be required to add the extra five parking spaces needed for the size of the restaurant.

Commissioner Thnay asked about the two variances. He suggested reducing the size of the restaurant to 4,800 square feet. He also asked about the restroom sizes. He also suggested that for the other variance, which only amounts to 20 feet, there seems to be room to work with staff to check this out.

Commissioner Halliday asked staff to address the need for the property to widen the road

Planning Manager Anderly explained that each street in the City is subject to precise plan line, the ultimate street width that is established for each street by the Municipal Code. In the Industrial District they are a certain width, to accommodate trucks, etc. In this case, the ultimate width of Cloud Way is such that the property that is abutting it as it is developed and as it contributes vehicles to that street is required to dedicate land to do that. It is not unusual at all to do that. The law allows for housing, for example, to calculate the number of homes built on a property, based on the acreage before it is dedicated. However, the setback requirement has to meet the situation after it is dedicated.

Mr. Yinger then submitted a petition signed by 75 neighbors and people who are supporting the project.

Patricia O'Day, representing West Winton Investments, said she just found out about this project last week. She indicated that they have more questions than concerns, as in what kind of nightclub will it be. If there were a lot of rowdy people, it would be a concern. Most of the properties in this industrial area close at night. On their property is an auto repair place. The project will also add more congestion to West Winton.



David Kota, the Commpre (Community Prevention of Alcohol Related Problems) representative, said they support the recommendation of staff to deny the application. There are families in the area who already tolerate the industrial noise during the day; patrons of this restaurant/bar will prolong the noise into the nights and weekends. He said they also do not support the variance for parking. This is not an environment to support this type of business. It will require patrons to drive to the location. There is a lack of other commercial uses with little public transportation so this would increase the risk of driving while intoxicated. He asked about the type of license the applicant is seeking. Without this information, it is impossible to know whether it is an asset to the City of Hayward. He maintained that there is no justification to ask for a variance.

Gerald Reilly and Alycia Roberts said the plans look good. The restaurant would be amazingly compatible to the area. They expressed concern with the alcohol and the nightclub. With that much alcohol, there is a combination of their children patrons and drunk drivers. She wanted to see a menu and the type of clientele. This area is not patrolled. You can try to control but things do happen. They expressed concern about the type of clientele and whether the hours would be compatible.

Helen Safaari said she thinks it is a wonderful idea. She has lived in that area for two years. She expressed support for the project. It will be a beneficial project for the area.

The public hearing was closed at 9:36 p.m.

Chairperson Zermeno expressed concern that previously the Commission has had details on the hours and menus, etc.

Associate Planner Emura explained that the applicant was proposing serving American and Mediterranean food. It would be open Monday through Friday 11 a.m. until midnight, with weekends devoted to special events and banquets.

Planning Manager Anderly said that normally they would have more information but since staff is recommending against the variance. If the Commission were supporting the variance, they would bring back further details with conditions of approval. The Police Department would also have to present security information.

Chairperson Zermeno asked about the timing of the notice with holidays.

Planning Manager Anderly mentioned that this application has been around a long time. She noted that it would be continued if they support the plan.

Commissioner Bogue expressed similar concerns about the nightclub concept. It depends how it is operated. He noted that the area is underserved by restaurant. He said he is impressed someone is proposing to build something so large out there. It is an appropriate use in the area

although he was not in favor of reducing the landscaping setback. He said he was not interested in the variance or setback. He would be willing to allow the exception for waiving the tractor/trailer condition and the parking for tractor/trailer does not usually work. He then moved, seconded by Commissioner Sacks, to have it all come back with the conditional use permit for the nightclub and bar so the Commission can review the conditions for use permit. Not to allow front setback and not reduce the parking requirement. He said he was interested in conditions and security requirements and hours.

Commissioner Fraas said the design and idea are great. She agreed that the setbacks should be maintained, so she would defer to staff for the parking and setback and support the motion.

Commissioner McKillop asked whether they need special circumstances to reduce the number of parking requirement.

Planning Manager Anderly noted that they could find hardship for parking, if there is a building on the property for example.

Commissioner McKillop said it was a great project and will be a positive addition to the community. She said she would support the motion.

Commissioner Sacks discussed a seminar she attended in Redwood City on new job centers, work place districts. Looking at commercial, industrial centers, and proposing a lot more uses within those areas. She said she was very concerned about the definitions which will come back to the Commission. They would pay very close attention to all of the comments.

Commissioner Thnay thanked the owner and applicant. He said he thinks it is close if they will work with staff.

Commissioner Halliday said she appreciated the information from Commpre and Operation Paintball, and the use as a nightclub. This will be operating when everything else is closed. She said she would support the motion but believes it could be designed with requirements met.

Chairperson Zermefio said he does support the concept of a restaurant in this area, although he agreed they need more details and modification.

The motion passed 7:0.

## **ADDITIONAL MATTERS**

### **3. Oral Report on Planning and Zoning Matters**

Planning Manager Anderly said there was no report but informed members of Bea Thornton's passing. She noted that services would be held February 14<sup>th</sup>. She added that there would be one further meeting this month.

### **4. Commissioners' Announcements, Referrals**

Commissioner Sacks discussed further the forum in Redwood City and how very much she enjoyed the City calling it a was "delightful experience," even in the rain. The seminar was on

June 11, 2004

Ted Rusley  
1499 Entrada Verde  
Alamo, CA 94507

City of Hayward, Planning Division  
777 "B" St.  
Hayward, CA 94541

RECEIVED

JUN 11 2004

PLANNING DIVISION

Dear Sir:

I am writing to protest the approval by the Planning Commission of the construction of a bar and nightclub at 1705 W. Winton Ave. The presence of a bar will attract drug activity and prostitution as well as disorderly behavior. Extra police protection will be necessary, as there have been fights and shootings at bars in the City of Hayward. The security of numerous business properties in the area will be compromised due to vandalism and theft. Parking will be a nightmare.

I own the property at 1770 W. Winton Ave., directly across the street from the proposed site, and there have already been occasions when I have had to chase drug dealers, prostitutes, vagrants, and criminals from my property. I do not welcome a proposal that is likely to add fuel to this fire. Therefore, I request that the City Council reject this proposal.

Sincerely,

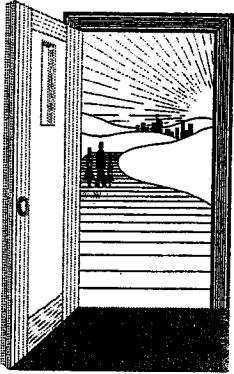
*Ted Rusley*

Ted Rusley



June 10, 2004

## COMMPRE



Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward  
777 B. Street  
Hayward, CA 94541

**Re: Appeal of the Planning Commission decision for Conditional Use Permit  
PL-2002-0099, Robert Lavassani (Applicant/Owner)**

Dear Mr. Koonze:

22652 Second Street  
Hayward, CA 94541  
(510) 247-8207  
(510) 247-8210 fax



A program of  
Horizon Services, Inc.

This is to inform you of our opposition to the June 3 decision by the Planning Commission to approve the construction of a restaurant with a bar and nightclub at 1705 W. Winton Ave. Therefore, we are appealing the Planning Commission's decision. Our appeal is based on the inconsistencies the staff report regarding the license type.

An ABC license type 47 restricts the license holder to operate as a restaurant *only* and *minors are allowed* on the premises. In order for an establishment to operate as a bar and nightclub, the applicant must obtain a license type 48, which *does not* allow minors to enter and remain. Even if the nightclub activities are limited to the hours of 10pm and 12am, a license type 48 would be needed. The staff report conditions **ONLY** a license type 47. Therefore, a nightclub would not be able to operate.

There are over twenty establishments in Hayward that hold 47 type licenses such as the Olive Garden Italian Restaurant, Applebee's in Southland, Hayward Ranch, Han Yang BBQ Restaurant, Hayward Fishery, among others. By allowing a restaurant to operate as a nightclub as well, the City of Hayward would set a precedent and would encourage new and existing restaurants to allow nightclubs as their secondary use.

CommPre recognizes that there may be a need for a quality restaurant at this location, however we oppose the nightclub use, because the City of Hayward does not need any more problems associated with nightclubs; such as increased noise and speed from automobiles, drunk driving, fights, disturbing the peace, etc.

The staff report says that by "*allowing the sale of alcohol at this location will not detrimentally affect the surrounding neighborhood given there are no residential neighborhoods...located near this site*". The report neglects to state that *there are* single and multi-family dwellings near by that would be impacted by the nightclub operation. Nearby residents have testified and presented written responses opposing the nightclub operation. Therefore, we do not believe that this finding can be met.

In addition, we ask the Planning Department to explain when the appeal process changed in terms of the appeal fee. In the past, it was the applicant who paid the fee

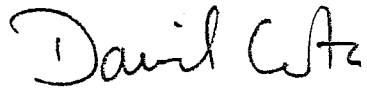
RECEIVED

JUN 11 2004

PLANNING DIVISION

for the appeal, not the appellant. Please clarify this and advise us on how to proceed with the appeal to the Hayward City Council.

Sincerely,

A handwritten signature in cursive script that reads "David Cota". The letters are fluid and connected, with a prominent loop at the end of the last name.

David Cota  
Prevention Specialist / Community Organizer

**DRAFT**

HAYWARD CITY COUNCIL

RESOLUTION NO. 04-

Introduced by Council Member \_\_\_\_\_

**RESOLUTION DENYING THE APPEAL AND UPHOLDING  
THE PLANNING COMMISSION'S APPROVAL OF USE  
PERMIT PL-2002-0098**

WHEREAS, on June 3, 2004, the Planning Commission unanimously approved Use Permit PL-2002-0098 of Robert Lavassani (Applicant/Owner) to construct a restaurant with bar and night club on property located at 1705 West Winton Avenue within the Industrial (I) District; and

WHEREAS, the City received two appeals, one from a nearby industrial property owner stating that the business would attract drug activity, prostitution and disorderly behavior and the other appeal from Community Prevention of Alcohol Related Problems (CommPre) stating that the type of Alcoholic Beverage Control (ABC) license required by the conditions of approval is in conflict with the type of use proposed; CommPre supports the restaurant but not the nightclub and expressed concerns about potential increases in noise, speeding automobiles, drunk driving, fights and disturbing the peace; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15332, Class 32, Infill Development Projects in Urban Areas;
2. The proposed restaurant is desirable for the public convenience and welfare as it will provide a need to service an area deprived of eating establishments;
3. The proposed restaurant will not impair the character and integrity of the zoning district and the surrounding area as the use is permitted by the zoning ordinance with approval of a site plan review and the restaurant's busiest hours of operation are evenings and weekends when surrounding uses are closed;
4. The proposed restaurant will not be detrimental to the public health, safety or general welfare as it is regulated by the Alameda County Department of Environmental Health and a condition of approval will require the restaurant manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief;

5. The project use is in harmony with applicable City Policies in that the building incorporates design elements that are harmonious and in proportion to one another, articulates entries and windows along street frontages and creates shadow relief with off-setting walls, columns and trellises;
6. The proposed use is in harmony with the intent and purpose of the industrial zoning district in that it helps promote a desirable work environment in that it serves the need of the employees to neighboring businesses by providing an eating establishment which is lacking in the area;
7. Allowing the sale of alcohol at this location will not result in an undue concentration of establishments dispensing alcoholic beverages in the area as there is one deli 1/4 of a mile from the site and the next nearest sale of alcohol occurs over a mile away;
8. Allowing the sale of alcohol at this location will not detrimentally affect the surrounding neighborhood given there are no residential neighborhoods, churches, schools, public playgrounds, parks, recreational centers or similar uses located near the site.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the appeal of the Planning Commission's approval of Use Permit Application No. PL-2002-0098, regarding the request to construct a restaurant with a bar and nightclub, is denied, and upholds the Planning Commission's approval of the project, subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward